165-341
165-341

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No 620.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

WILLIAM DICKSON, ASSIGNEE OF FRANK H. FINLEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 6, 1896.

(16399.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 620.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

WILLIAM DICKSON, ASSIGNEE OF FRANK H. FINLEY.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition filed, etc	1	1
Amended petition	1	1
Traverse	4	2
Findings of fact	5	3
Conclusion of law	6	3
Opinion of the court	7	4
Judgment	8	6
Application for and allowance of appeal	9	6
Clerk's certificate to transcript	10	6
Clerk's certificate to plea in case of Brown *v.* District of Columbia	11	7
Plea in case of Brown *v.* District of Columbia	12	7

1 In the Court of Claims.

WILLIAM DICKSON, ASSIGNEE OF FRANK H. FINLEY,
vs.
THE DISTRICT OF COLUMBIA. } No. 305.

I. *Petition.*

The claimant filed his original petition in the above-entitled cause December 15, 1880.

The case was submitted May 26, 1882, and said petition was dismissed by the court May 29, 1882.

On the 6th day of April, 1895, the court vacated and set aside the judgment of May 29, 1882, and granted a new trial on motion of claimant, made in pursuance of an act of Congress approved February 13, 1895, amending the act of Congress approved June 16, 1880.

On April 11, 1895, the plaintiff filed his amended petition, by leave of court, which is as follows:

Amended petition.—Filed April 11, 1895.

To the Honorable Chief Justice and Judges of the Court of Claims:

The petitioner and claimant, William Dickson, assignee of F. H. Finley, respectfully represents:

I.

That he is a citizen of the United States of America, and resides in the city of Washington, District of Columbia.

2 II.

The claimant brought suit in this court under the act of Congress approved June 16, 1880 (21 Statutes at Large, page 234), for work done and material furnished by his assignor for and used by the District of Columbia, under the contracts and orders therein named, and, failing to recover the rates established and paid by the board of public works, he petitioned Congress for relief. A bill passed the Senate for his relief, but failed to pass the House of Representatives.

The claimant files this petition under and by virtue of the act of Congress approved February 13, 1895.

(Volume , Revised Statutes, page .)

IV.

The claimant avers that the work was performed and materials furnished by his assignor for the District of Columbia, and which were accepted and used by said District, as given in the following statement; that the rates established and paid by the board of public works for such work and materials were as appear in the following statement, and that

he was not paid such rates, but was paid only as the following statement shows, to wit:

Claim for difference in price for hauling 30,640 cubic yards of earth a distance of 5,100 feet over 100 feet, under contract No. 4 with board of public works, at 1¼ cts. each 100 feet.

Hauling 30,640 cubic yards, at established rates	$19,533.00
June 2, 1873, amount paid Finley, at the rate of ½ cent each 100 feet	7,813.20
	$11,719.80
Amount paid for filling canal	4,596.00
Amount due	$7,123.80

With legal interest from May 10, 1876.

The claimant demands judgment against the District of Columbia in the sum of $7,123.80, with legal interest from March 10, 1876.

3 Your petitioner further represents that no assignment or transfer of said claim or interest therein has been made except as stated in the original petition, and that he is justly entitled to the amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he believes the facts stated in said petition to be true.

WILLIAM DICKSON,
Claimant.

DISTRICT OF COLUMBIA, *City of Washington, ss:*

William Dickson, assignee of F. H. Finley, personally appeared before me and made oath according to law that no assignment or transfer of said claim or any interest therein has been made, except as stated in the original petition, and that he, as assignee of said Finley, is justly entitled to the same amount therein claimed from the District of Columbia, after allowing all just credits and offsets, and that he believes the facts as stated in said petition to be true.

WILLIAM DICKSON.

Sworn and subscribed before me this ninth day of April, A. D. 1895.

[SEAL.] FRANK B. MARLOW,
Notary Public.

4 *Traverse of amended petition.—Filed May 18, 1896.*

WILLIAM DICKSON, ASSIGNEE OF FRANK H. FINLEY,
vs.
THE DISTRICT OF COLUMBIA. } No. 305.

And now comes the Attorney-General, on behalf of the District of Columbia, and, answering the amended petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the amended petition be dismissed.

J. E. DODGE,
Assistant Attorney-General.

5 *Findings of fact and conclusion of law.—Filed June 22, 1896.*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

On September 18, 1871, said Finley entered into a contract with the board of public works, No. 4, for laying foot pavements and setting curb on Eleventh street west, from E to F streets, which was, on May 20, 1872, extended to embrace work on said street from F to N streets, under which, among other things, he did certain excavations for grading and hauling earth.

II.

The board of public works, by general order, without contract in writing, increased the price of haul of grading from one-half cent per cubic yard, contract rates, to 1¼ cents per cubic yard for each 100 feet of haul, to apply to all work performed after January 1, 1873, and this increase became known as "the rates established and paid" by said board, or "board rates," but were not so paid in this case, as is hereinafter set out.

III.

After January 1, 1873, said Finley excavated and hauled the following under extension of contract 4:

Eleventh street west, F to N northwest, 30,640 cubic yards hauled 5,100 feet over 200 feet, for which he was allowed and paid only contract rates instead of board rates, to which he became entitled under act of February 13, 1895 (28 Stat. L., 664), the difference being $5,982.30.

All work was completed June 2, 1873, and whatever accrued to said Finley under the contract was paid to him before his assignment to the claimant.

IV.

SET-OFF.

On the 23d of September, 1875, said Finley presented to the *board of audit* the following claim:

"WASHINGTON, D. C., *Sept. 23, 1875.*

"To the BOARD OF AUDIT:

"I certify that I performed the work under contract No. 4 for the improvement of 11th street, between F and N streets northwest,
6 and that I was allowed in settlement for the said work 30,640 cubic yards of earth excavated and hauled to the canal, for which I received payment at the rate of one-half cent for each 100 feet over 200 feet; that all of the earth removed from 11th street was deposited in the canal under orders of the board of public works, and that depo-

nent is fully entitled to three-quarters of a cent additional pay for all the earth hauled during the year 1873, and an additional allowance for filling canal.

"Sworn and subscribed 23d day of September, A. D. 1875."

Upon this application the board of audit, in mistake of fact, in supposing that the board of public works had agreed to pay said Finley 15 cents per cubic yard for depositing earth in the canal in addition to the price paid him for hauling the same, whereas no such agreement ever had existed, made an allowance to him accordingly, "for work on 11 st. NW., F to N, filling canal, 30,640 yds. at 15 cts., $4,596," and that amount was paid to him October 19, 1875, in board of audit certificates (since redeemed), and he receipted for the same.

It was so found in the former findings of the court and is now found anew, and all the previous findings of any transactions between said assignor and assignee and between either of them and the District of Columbia (the same as reported in 17 C. Cls. R., 402) not inconsistent with these findings, are hereby adopted.

ASSIGNMENT.

On the 14th of December, 1880, said Finley made the following assignment to the claimant:

"For value received, I hereby assign unto William Dickson all my right, title, and interest in and to a claim for extra allowance due in haul on contract No. 4, issued by the board of public works, being the difference between the amount paid on account of said claim, $4,596, and the amount due, $11,791, with interest to time of settlement. * * *

"Witness my hand and seal this fourteenth day of December, 1880."

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides as a conclusion of law that the claimant is entitled to recover under the act of February 13, 1895 (28 Stat. L., 664), the sum of one thousand three hundred and eighty-six dollars and thirty cents ($1,386.30), as due and payable June 2, 1873, within the intent and meaning of said act of 1895 and the act of June 16, 1880 (21 Stat. L., 284); being the balance due said Finley when his assignment was made.

7 *Opinion of the court.*

RICHARDSON, Ch. J., delivered the opinion of the court:

The claimant, as assignee of Frank N. Finley, who had contracts for work for the defendants through the board of public works in 1873 and previous years, and who made assignments of amounts due him thereon to several different persons, brought his action in this court against the District, as did other assignees.

These cases were consolidated and tried together, as reported in 17 C. Cls. R., 303, 402.

The claimant's assignment was dated December 14, 1880, after the work under the contract had been completed and all the transactions

mentioned in the findings between said Finley and the District had taken place, so that the claimant stood in exactly the same position as to the right of recovery as did Finley. In that action the claimant was not allowed "the rates established and paid" by the board of public works, but was held to contract rates.

The defendant relies upon a set-off for $4,596 on the facts formerly found and as now found anew in Finding IV, and the court sustained the same, but judgment was not rendered thereon against the claimant, manifestly because in accepting an assignment of Finley's rights he did not become liable for refund on account of Finley's wrongs except by way of set-off. Judgment was rendered dismissing the petition.

April 6, 1895, the claimant filed a motion for a new trial, which was allowed under the following act of Congress:

Be it enacted, etc., That in the adjudication of claims brought under the provisions of the act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the board of public works; and whenever said rates have not been allowed the claimant or his personal representative shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause.

(Act February 13, 1895, Ch. 87, 28 Stat. L., p. 664.)

We have now found the amount due for Finley's work at the rates established and paid by the board of public works in excess of that which had been previously allowed, to be stated in Finding III, $5,982.30.

And we find that there must be deducted therefrom the sum of $4,596 wrongly paid to said Finley before the assignment to the claimant.

In relation to this set-off we said in our former opinion in this case (17 C. Cls. R., 423), and we adhere to the same now:

"On the 23d of September, 1875, Finley presented to the board of audit a claim for additional compensation for depositing earth in the canal. The board of audit having been induced by the misrepresentations of the claimant or otherwise to suppose that the board of public works had agreed to give him 15 cents per cubic yard for earth deposited in the canal in addition to the price for hauling, made allowance to him therefor to the amount of $4,596, and he was paid that sum on such allowance.

"This claim was presented long after the authority of the board to receive claims had expired, and its action thereon was ultra vires, and voidable if not void. Besides, the claim had no foundation in fact. The board of public works never did agree to pay 15 cents or any other price for depositing earth in the canal the hauling of which they were to pay for according to distance hauled. Such an agreement was not expressed in any of the writings or facts set forth in the findings; and it is not to be presumed, so closely would it border upon absurdity. When a contractor agrees to excavate earth and haul it away, and prices

are expressly fixed for the excavation and for the haul, it is hardly to be conceived that it could be understood that he was to have extra compensation for emptying his carts. And yet such was Finley's claim, and the board of audit fell into the mistake of accepting it.

"This allowance was made in mistake of fact, and the defendant has a right to set it up as a counterclaim against Finley."

It is therefore a valid set-off to his claim in the hands of his assignee.

For the balance, $1,386.30, we give judgment in favor of the claimant under said act of February 13, 1895, assuming that Congress had the right to require the court to grant a new trial and to allow the claimant more than the District had legally contracted to pay, as decided by this court in several cases and by the Supreme Court on appeal. (Roche's Case, 18 C. Cls. R., 217; Barnard Case, 20 C. Cls. R., 257, and 127 U. S. R., 409; Barnes Case, 22 C. Cls. R., 366; Eslin's Case, 22 C. Cls. R., 395, and 29 C. Cls. R., 370.)

8 *Judgment of the court.*

At a Court of Claims held in the city of Washington on the 22d day of June, A. D. 1896, judgment was ordered to be entered as follows:

The court on due consideration of the premises find for the claimant, and do order, adjudge, and decree that the said William Dickson, as assignee of Frank H. Finley, do have and recover in the manner provided by the act of June 16, 1880, and under act of February 13, 1895, the sum of thirteen hundred and eighty-six dollars and thirty cents, upon debts of the District of Columbia due and payable June 2, 1873, within the intent and meaning of said acts.

BY THE COURT.

9 *Application for and allowance of appeal.*

WILLIAM DICKSON, ASSIGNEE OF FRANK H. FINLEY,
vs.
THE DISTRICT OF COLUMBIA. } No. 305.

From the judgment rendered in the above-entitled cause on the 22d day of June, 1896, in favor of the claimant, the defendant by the Attorney-General on the 3d day of September, 1896, makes application for and gives notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Attorney-General.

Filed September 3, 1896.

Allowed in vacation September 4, 1896.

WILLIAM A. RICHARDSON,
Chief Justice.

10 In the Court of Claims.

WILLIAM DICKSON, ASSIGNEE OF FRANK H. FINLEY,
vs.
THE DISTRICT OF COLUMBIA. } No. 305.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the

above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the judgment of the court, of the application of defendant for the allowance of appeal to the Supreme Court of the United States, and of the allowance of same.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington City, this 11th day of September, A. D. 1896.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

11 In the Court of Claims. Term 1895–1896.

WILLIAM DICKSON, ASSIGNEE OF Frank H. Finley,
vs.
THE DISTRICT OF COLUMBIA. } No. 305. D. C.

I, John Randolph, assistant clerk of the Court of Claims, hereby certify that the annexed plea, filed by the defendant January 5, 1881, in the case of Thomas A. Brown vs. The District of Columbia, No. 3, consolidated with the above-entitled case, is, by order of court, certified to the Supreme Court of the United States as a part of the record on appeal from the judgment of the Court of Claims in favor of the claimant, William Dickson, assignee of Frank H. Finley, against The District of Columbia, entered June 22, 1896.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims this second day of October, 1896, at the city of Washington.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

12 In the Court of Claims of the United States. December term, 1880.

THOMAS A. BROWN
vs.
THE DISTRICT OF COLUMBIA. } No. 3.

Now comes the Attorney-General on behalf of the defendant, and amending his plea heretofore filed herein averring a set-off to the claim, says that the indebtedness to the defendant therein set forth arose as follows:

First. On the 28th day of July, 1873, Frank H. Finley, the alleged assignor to the claimant of the cause of action set forth in the petition, contracted in writing with the board of public works of the District of Columbia (which contract was also extended in writing on September 22, 1873) to lay blue-rock pavement on K street northwest in the city of Washington, and to receive in full compensation therefor the sum of $1.50 per square yard for each yard of such pavement so laid. The said Finley laid under said contract 8,822.06 yards of such pavement, for which, on November 7, 1874, he received from defendant the contract price in full payment.

On August 16, 1875, said Finley presented to the board of audit, constituted by and acting under the act of Congress approved June 20, 1874, entitled "An act for the government of the District of Columbia
13 and for other purposes," the following claim, on account of said work:

WASHINGTON, D. C., *August 16, 1875.*

To the Hon. BOARD OF AUDIT:

Upon examining the settlement of my account under contract 795 for work done on K st. NW., from 7th to N. Capitol sts., I find that I was allowed only $1.50 per sq. yard for blue-rock pavement. The price was $1.75, as I understood and expected to receive. Will you be kind enough to have the account corrected and the amount, $2,205.52, paid me? I would also make inquiry whether the two feet of grading was deducted. My understanding was that two feet of grading was not deducted from blue-rock pavement.

Yours, respectfully,

F. H. FINLEY.

The said Finley then and there well knowing that his statement therein that the price was $1.75, as he understood and expected to receive, was false and intending thereby and by the presentation of said claim to deceive and defraud the defendant by claiming wrongfully from the defendant the said sum of $2,205.52; and by the said and other false and fraudulent acts, statements, and representations said Finley procured from the said board of audit on August 21, 1875, as in full settlement of the said claim, their certificates, two in number, for the said amount, dated October 1, 1874, purporting to be issued under the authority conferred on said board by the sixth section of the act aforesaid, but which certificates so issued to said Finley the said board then and there had no jurisdiction or authority to issue. The certificates so obtained were thereafter exchanged, by or on behalf of said Finley, for 3.65 bonds, so called, of the defendant, as provided in said act, and bearing interest from October 1, 1874. By reason of the said premises, the said Finley wrongfully received from the said defendant, and has ever since held for its use, $2,205.52, with interest thereon from October 1, 1874, which is part of the indebtedness claimed as a set-off, as hereinbefore averred.

Second. On the 18th day of September, 1871, the said Finley also contracted in writing with the said board of public works (which
14 contract was also extended in writing on May 20, 1872) to lay a brick foot pavement along Eleventh street from F street northwest to E street northwest, and to set the curbstones along Eleventh street west between said points, and to lay foot pavements and set the curbstones on Eleventh street northwest from F street north to N street north, and to receive in full compensation for labor in any grading required to be done in the prosecution of the whole work and in all respects completing the same thereunder, the sum of 20 cents per cubic yard of such grading.

The said Finley, on or about June 2, 1873, claimed before the said board of public works to have graded under said contract 30,640 cubic yards of earth, and to have hauled the same a distance of 5,300 feet,

and on said date claimed and received from the said board the sum of $11,046.40 for said grading, being at the rate of 40 cents per cubic yard for 16,544 cubic yards, and at the rate of 30 cents per cubic yard for 14,096 cubic yards thereof; and also $8,815.57 (being at the rate of 25½ cents per cubic yard) for hauling the said 30,640 cubic yards the distance aforesaid, as full compensation and in final settlement of his alleged claim of grading done under said contract.

On September 23, 1875, said Finley presented to the board of audit aforesaid the following claim on account of the work included in the said claim and settlement of June 2, 1873:

WASHINGTON, D. C., *Sept. 23, 1875.*

To the BOARD OF AUDIT:

I certify that I performed the work under contract No. 4 for the improvement of 11th street, between F and N streets northwest, and that I was allowed in settlement for the said work 30,640 cubic yards of earth excavated and hauled to the canal, for which I received payment at the rate of one-half cent for each 100 feet over 200 feet; that all of the earth removed from 11th street was deposited in the canal under orders of the board of public works, and that deponent is fully entitled to three-quarters of a cent additional pay for all of the earth hauled during the year 1873, and an additional allowance for filling canal.

F. H. FINLEY.

Sworn and subscribed before me this 23d day of September, A. D. 1875.

ROBERT V. HUGHES, *J. P.* [SEAL.]

15 The said Finley then and there well knowing that he had been paid in final settlement a far greater sum than the contract price, and also the reasonable worth of the work claimed to have been done by him under the said contract, and that his statement among other things that he was fully entitled to an additional allowance for filling the canal was false; and intending thereby, and by the presentation of said claim, to deceive and defraud the defendant by obtaining wrongfully from the defendant the payment of a large sum of money therefor; and by the said and other false and fraudulent acts, statements, and representations, said Finley procured from the said board of audit as in full settlement of his said last-mentioned claim, on October 19, 1875, their certificate for $4,596, dated August 1, 1874, purporting to be issued under the authority conferred on said board by the sixth section of the act aforesaid, but which certificate so issued to said Finley the said board then and there had no jurisdiction or authority to issue. The certificate so obtained was thereafter exchanged by or on behalf of said Finley for three-sixty-five bonds, so called, of the defendant, as provided in said act, and bearing interest from August 1, 1874. And by reason of the said premises, the said Finley wrongfully received from the defendant, and has ever since held for its use, the said sum of $4,596, with interest thereon, from August 1, 1874, which is part of the indebtedness claimed as a set-off as hereinbefore averred.

Third. Under the contract first herein mentioned the said Finley agreed, among other things, to excavate for and lay down certain sewers

on K street northwest in said city, at and for the prices and under the conditions expressed in said contract; and for all such work done by said Finley under said contract, he, on November 7, 1874, was fully paid by the defendant. Nevertheless, said Finley, on or about August 6, 1875, presented to the said board of audit a claim as for work done under said contract in and about the excavation and laying down of said
16 sewers, of about $1,741.66, the said Finley then and there knowing that the same was not a just and lawful claim against the defendant, and intending thereby to deceive and defraud the defendant by obtaining wrongfully from the defendant the payment of said sum; and by the said and other false and fraudulent acts, statements, and representations said Finley procured from the said board of audit, as in full settlement of the said last-mentioned claim, on August 10, 1875, their certificates (two in number) for the said amount, dated August 1, 1874, purporting to be issued under the authority aforesaid, but which certificates so issued to said Finley the said board then and there had no jurisdiction or authority to issue. The certificates so obtained were thereafter exchanged by or on behalf of said Finley for three-sixty-five bonds, so called, of the defendant, as provided in said act, and bearing interest from August 1, 1874. And by reason of the said premises the said Finley wrongfully received from the defendant, and has ever since held for its use, the said sum of $1,741.66, with interest thereon from August 1, 1874, which is part of the indebtedness claimed as a set-off, as hereinbefore averred.

THOMAS SIMONS,
Assistant Attorney-General.

(Indorsement on cover:) Term No., 620. The District of Columbia, appellant, vs. William Dickson, assignee of Frank H. Finley. Case No. 16399. Court of Claims. Filed October 6th, 1896.

O

165-341
recvd

Office Supreme Court, U. S.
FILED
DEC 21 1896
JAMES H. McKENNEY,
CLERK.

165-341 Ex 380.

Supreme Court of the U. S.

October Term, A. D. 1896.

No. 620.

THE DISTRICT OF COLUMBIA, Appellant,

vs.

WILLIAM DICKSON, Assignee of Frank H. Finley, Appellee.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

V. B. EDWARDS,
Attorney for Appellee.

IN THE

Supreme Court of the U. S.

October Term, A. D. 1896.

No. 620.

THE DISTRICT OF COLUMBIA, Appellant,

vs.

WILLIAM DICKSON, Assignee of Frank H. Finley, Appellee.

Appeal from the Court of Claims.

BRIEF FOR APPELLEE.

This is an appeal by the appellant from the judgment of the Court of Claims rendered in favor of the appellee, against the District of Columbia, on the question of interest due on the debt.

It appears by the facts found, that the appellee had contracts with the Board of Public Works, of the District of Columbia, to do certain work, and furnish materials in grading streets &c. &c., in the city of Washington, and for such work the Board of Public Works had established and paid, a regular rate or price called "Board Rates."

That appellee's work was completed June 2, 1873.

The contracts provide that payment be made upon completion of the work, the appellee brought suit in 1880, and also under the Act of 1895.

The Court of Claims found that appellee's debt became due and payable June 2, 1873, within the intent and meaning of the Acts of Congress approved June 16, 1880, and February 13, 1895, which by express terms allows the appellee 3.65 per cent interest on the debt from the time it was due and payable. See Sec. 5 and 6 act of June 16, 1880.

The appellant contends that the debt should only draw interest from the date of the Act of 1895.

The appellee contends that the debt draws interest from the date it became due and payable, as decided by the Court of Claims.

By the 6th Sec. of the Act of June 16, 1880, (21 Statutes, 284) the judgments of the Court of Claims, against the District of Columbia, were to be paid in 3.65 bonds, authorized by the Act of June 20, 1874, (18 Statutes, 120) the proviso to said Sections reads as follows:

> "Provided: that before the delivery of such "bonds, as are issued in the payment of judgments "rendered as aforesaid on the claims aforesaid, the "the coupons shall be detached therefrom, from the "date of said bonds to the date upon which such "claims were due and payable."

The bonds aforesaid to be delivered in payment of the judgments aforesaid were to have *interest* coupons attached thereto, from August 1, 1874, the date of the bonds, and in such cases, as the Court found that the debt was due and payable *after* August 1, 1874, then as expressly provided by said section, the interest coupons from August 1, 1874, to the date the debt was found to

be due and payable, were to be *detached*, leaving the interest coupons attached on the bonds from the date the debt was due and payable.

In the former trial of this suit (17 Court Claims, 402) the Court found due Finley for work done under his contracts $10,965.89, from which the Court deducted the items claimed in the set off filed by appellants, in in this suit, leaving a balance due Finley. As the Act of 1895, in effect allows to appellee the items, therefore, the debt that is due Finley as found by the Court, is due him under the Act of 1880, for work done under the contract, and should bear interest from the date work was completed.

The appellant did contend that this debt was a gratuity, but it can, in no sense, be considered a gratuity, the debt is for labor performed and material furnished the District of Columbia, in the year 1873, and the right to such compensation therefor became fixed and vested when the work was completed.

This Court in the twenty percent cases, 20 Wallace 186, said:

> "(5) That the right to such additional compensa-
> "tion became fixed and vested when the year's ser-
> "vices were faithfully performed."

The Court of Claims in the case of Hall vs. D. C. No. 224, now on appeal to this Court No. 619, Oct. 1, 1896, well said:

> "The relief offered by the new trial is not there-
> "fore a mere gratuity; but the recognition of a
> "legal right founded upon an equitable claim, *
> " * * * * the Act of 1895, is an amendment
> "to the Act of 1880, and becomes a part of that
> "Act in the determination of cases which have not
> "been tried and cases where new trials are grant-
> "ed."

"By the Act of 1880, the claimant is entitled to "receive in payment, certain bonds with the in- "terest coupons detached from the date of such "bond to the time when such claims became due "and payable. The effect of the Act of 1880 was "to allow interest at the rate of the bond, from the "time the claim was due and payable to the time "of the rendition of the judgment, and so in ac- "cordance with that right or requirement, the "judgment of the Court recited the time when the "claim was due and payable, so as to indicate to "the department to what period the coupons were "to be detached in the certification of the judg- "ment of the Court."

This Court has decided that a debt bore interest from the time it became due and payable.

In Young, trustee vs. Godbe, 15 Wallace, 562, this Court said:

"If a debt ought to be paid at a particular time, "and is not, owing to the default of the debtor; the "creditor is entitled to interest from that time by "way of compensation for the delay in payment, "and if the account be stated, as the evidence went "to show was the case here, interest begins to run at "once. 1 American Leading Cases 5th ed., pp. 626 "and 514.

"It is said there is no law in the Territory of "Utah prescribing a rate of interest in transactions "like the one in controversy in this suit, and that, "therefore, no interest can be recovered, but this "result does not follow. If there is no statute "on the subject, interest will be allowed by the "way of damages for unreasonably withholding "payment of an overdue account. The rate must "be reasonable, and conform to the custom which "obtains in the community in dealings of this char- "acter."

The contracts in this case show that claimant was to be paid for his work on completion of his contract, and that an account was stated June 2, 1873, that appellee brough tsuit against the District of Columbia, in 1880, p.1, that he petitioned Congress for relief p. 1 and again sued the District April 11, 1895, p 1.

The District has delayed, litigated, and contested, year after year, in court after court for over twenty years, the payment of this just debt. This Court in the case of the City of Chicago vs. Tebbetts, 104 U. S. 120 said :

> "It is now more than twelve years since the prop-
> "erty was condemned. The money has been due
> "and ought to have been paid long ago, it was the
> "duty of the city to provide for its payment. In-
> "stead of that it has litigated and contested the
> "demand year after year, and in court after court,
> " * * * * * * but a party guilty of unreason-
> "able and vexatious delay in making payment of a
> "just claim, cannot be relieved by offering to pay
> "interest from the time the delay began to be un-
> "reasonable and vexatious. If he is guilty of such
> "delay he is chargeable with interest on the debt
> "from the time it became due as upon other debts
> "enumerated in the law."

Interest in this case, is by the express provisions of Sections 5 and 6 of the Act of June 16, 1880, allowed at the rate of 3.65 per cent (21 statutes, 285) from the time the debt became due and payable and the Court of Claims has found as a fact, that the debt of the appellee, became due and payable June 2, 1873.

If it was not for the statute before cited fixing the interest at 3.65 per cent, the appellee would be entitled to recover interest at the rate usually paid (6 per cent) as he has been subject to unusual delay, litigation and con-

tention, in Courts and Congress, and would therefore come within the rule as laid down by this Court, in the authorities before cited.

Respectfully submitted,

V. B. EDWARDS,

For Appellee.